

CHAPTER 13-03-16

MEMBER BUSINESS LOAN LIMITS

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13-03-16-01. Definitions.

1. "Member business loans" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, except that the following may not be considered member business loans for the purposes of this section:
 - a. A loan or loans fully secured by a lien on a one to four family dwelling that is the member's primary residence.
 - b. A loan that is fully secured by shares in the credit union or deposits in other financial institutions.
 - c. A loan meeting the general definition of member business loans under subsection 1 and, made to a borrower or an associated member as defined in subsection 3, which, when added to other such loans to the borrower or associated member, is less than fifty thousand dollars.
 - d. A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.
 - e. A loan granted by a corporate credit union operating under the provisions of part 704 of the national credit union administration rules and regulations to another credit union.
2. "Associated member" means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.
3. "Immediate family member" means a spouse or other family member living in the same household.

4. "Loan-to-value (LTV)" ratio means the quotient of the aggregate amount of all sums borrowed from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.
5. "Construction or development loan" means a financing arrangement for the purpose of acquisition of property or rights to property including land or structures with the intent of conversion into income-producing property including residential housing for rental or sale, commercial, or industrial use, or a similar use.
6. "Net worth" means all the credit union's undivided earnings, regular reserves, and any other reserves.

History: Effective December 1, 1992; amended effective October 1, 1994; January 1, 2001.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-02. Requirements.

1. **Written loan policies.** The board of directors shall adopt specific business loan policies and review them at least annually. The policies must, at a minimum, address the following:
 - a. Types of business loans that will be made;
 - b. The credit union's trade area for business loans;
 - c. Maximum amount of credit union assets, in relation to net worth, that will be invested in business loans;
 - d. Maximum amount of credit union assets, in relation to net worth, that will be invested in a given category or type of business loan;
 - e. Maximum amount of credit union assets, in relation to net worth, that will be loaned to any one member or group of associated members, subject to subsection 1 of section 13-03-16-03;
 - f. Qualifications and experience of personnel involved in making and administering business loans with a minimum of two years direct experience with this type of lending;
 - g. Analysis of the ability of the borrower to repay the loan;
 - h. Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit shall, except where the board of directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the

credit union's written policies, include balance sheet, cash flow analysis, income statement, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation; including tax returns;

- i. Collateral requirements, including loan-to-value ratios; determination of value, title search, and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;
- j. Appropriate interest rates and maturities of business loans;
- k. Loan monitoring, servicing, and followup procedures, including collection procedures;
- l. Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans; and
- m. Identification, by position, of those senior management employees prohibited by subsection 1 of section 13-03-16-06 from receiving member business loans.

2. **Other policies.** The following minimum limits and policies must also be established in writing and reviewed at least annually for loans granted under this section:

- a. Loans, except with respect to credit card line of credit programs offered to nonnatural person members which are limited to routine purposes made available under such programs, must be granted on a fully secured basis by collateral as follows:
 - (1) Agricultural operating crop and livestock production loans with loan-to-value ratios up to eighty percent of projected crop production and livestock sales using current crop and livestock prices. This limitation does not apply if the agricultural operating loan is cross-collateralized with chattel or real estate if such loans do not exceed the loan-to-value ratios on chattel or real estate loans.
 - (2) First and second liens, including chattel, real estate, and all commercial loans, for loan-to-value ratios of up to eighty percent.
 - (3) First lien with a loan-to-value ratio in excess of eighty percent shall be granted only where the value in excess of eighty percent is covered through acquisition of private mortgage, or equivalent type, insurance provided by an insurer acceptable to the credit union or insurance or guarantees by or subject to

advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, and in no event may the loan-to-value ratio exceed ninety-five percent.

- b. Loans may not be granted without the personal liability and guarantees of the principals (natural person members) except where the borrower is a not-for-profit organization as defined by the Internal Revenue Service Code [26 U.S.C. 501].

History: Effective December 1, 1992; amended effective January 1, 2001.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-03. Loan limits.

1. **Loans to one borrower.** Unless a greater amount is approved by the state credit union board, the aggregate amount of outstanding member business loans to any one member or group of associated members may not exceed fifteen percent of the credit union's net worth (less the allowance for loan losses account), or one hundred thousand dollars, whichever is higher. A credit union may lend an additional ten percent of the credit union's net worth to any one member or group of associated members if such credit is extended for seasonal advances associated with operating purposes for the production of farm products and repayment of which is required to be made within a normal business cycle not to exceed twelve months. In no event can the credit union lend, or the state credit union board approve an exception for a credit union resulting in a loan to any one member in excess of the limitation specified in subsection 7 of North Dakota Century Code section 6-06-12. If any portion of a member business loan is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion may not be calculated in determining the fifteen percent limit.
2. **Exceptions.** Credit unions seeking an exception from the limits of subsection 1 or section 13-03-16-05 must present the state credit union board with, at a minimum the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; and analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of fifteen percent of net worth (less the allowance for loan losses account), underwriting standards and practices, types

of loans grouped by purpose and collateral and qualifications of personnel responsible for underwriting and administering member business loans. The state credit union board shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings. If the credit union does not receive notification of the action taken within ninety calendar days of the date the request was received by the state credit union board, the credit union may assume approval of the request to exceed the limit.

3. **Maturity.** Member business loans must be granted for periods consistent with the purpose, security, creditworthiness of the borrower and sound lending policies.
4. **Monitoring requirement.** Credit unions with member business loans in excess of one hundred percent of net worth (less the allowance for loan losses account) shall submit the following information regarding member business loans to the national credit union administration regional director on a quarterly basis: the aggregate total of loans outstanding; the amount of loans delinquent in excess of thirty days; the balance of the allowance for member business loan losses; the aggregate total of all concentrations of credit to one borrower or group of associated borrowers in excess of fifteen percent of net worth (less the allowance for loan losses account); the total number and amount of all construction, development, or speculative loans; and any other information pertinent to the safe and sound condition of the member business loan portfolio.

History: Effective December 1, 1992; amended effective January 1, 2001.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-04. Allowance for loan losses.

1. The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including the adequacy of analysis and documentation.
2. Loans classified must be reserved as follows:
 - a. Loss loans at one hundred percent of outstanding amount;
 - b. Doubtful loans at fifty percent of outstanding amounts; and

- c. Substandard loans at ten percent of outstanding amount unless other factors, e.g., history of such loans at the credit union, indicate a greater or lesser amount is appropriate.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-05. Construction and development lending. Loans granted under this section to finance the construction or development of commercial or residential property are subject to the following additional provisions:

1. The aggregate of all such loans, excluding any portion of a loan secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, may not exceed fifteen percent of net worth less the allowance for loan losses account;
2. The borrower shall have a minimum of thirty-five percent equity interest in the project being financed; and
3. Funds for such projects must be released following onsite inspections by independent, qualified personnel in accordance with a preapproved draw schedule.

History: Effective December 1, 1992; amended effective January 1, 2001.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-06. Prohibitions.

1. **Senior management employees.** A credit union may not make member business loans to the following:
 - a. Any member of the board of directors who is compensated as such;
 - b. The credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager);
 - c. Any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager);
 - d. The chief financial officer (comptroller);
 - e. Any associated member or immediate family member of the senior management employees listed in subdivisions a through d.

2. **Equity kickers or joint ventures.** A credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit or sale of business or commercial endeavor for which the loan is made.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-07. Recordkeeping. All loans, lines of credit, or letters of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, must be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the national credit union administration and commissioner.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-08. Aggregate loan limit. A credit union's aggregate limit for all outstanding member business loans, including any unfunded commitments, is the lesser of one hundred seventy-five percent of the credit union's net worth or twelve and one-quarter percent of the credit union's total assets. The aggregate loan limit must include the outstanding balance of any loan portion retained as to any participation sold and must include any outstanding balance for any portion of a loan participation purchased.

History: Effective January 1, 2001.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-09. Exceptions to the aggregate loan limit. The state credit union board may exclude a credit union from the aggregate loan limit under section 13-03-16-08 for any one of the following conditions:

1. Credit unions that have a low-income designation as provided for in 12 CFR 701.34 or participate in the community development financial institutions program as provided for in the Riegle Community Development and Regulatory Improvement Act of 1994 [12 U.S.C. 4703].
2. Credit unions that were chartered for the purpose of making member business loans under any of the following:
 - a. Original bylaws listing the field of membership to include a farm cooperative or agricultural-related association.

- b. Charter application including a narrative identifying lending focus to be business loans of any amount, including loans made for agricultural purposes.
3. Credit unions that have a history of primarily making member business loans, meaning that either member business loans comprise at least twenty-five percent of the credit union's outstanding loans as evidenced in a recent call report from 1996 or later or member business loans comprise the largest portion of the credit union's loan portfolio.

History: Effective January 1, 2001.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06